

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EARL D. WARNER,

Defendant.

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Criminal Action

No. 12-107

EXCERPT of transcript of proceedings on January 21, 2014,  
United States District Court, Pittsburgh, Pennsylvania,  
before Arthur J. Schwab, District Judge

APPEARANCES:

For the Government: Carolyn J. Bloch, Esq.

For the Defendant: David B. Chontos, Esq.

Court Reporter: Richard T. Ford, RMR, CRR  
6260 U.S. Courthouse  
Pittsburgh, PA 15219  
(412) 261-0802

Proceedings recorded by mechanical stenography; transcript  
produced by computer-aided transcription

1 (After lunch recess; on record in open court.)

2 THE COURT: Members of the jury, now that you have  
3 been sworn I will give you some preliminary instructions to  
4 guide you in your participation in this trial.

5 It will be your duty to find the facts solely from  
6 the evidence presented. You and you alone are the judges of  
7 the facts. You will then have to apply the law to those facts  
8 as the Court instructs you. You must follow the law whether  
9 you agree with it or not.

10 Nothing the Court may say or do during the trial is  
11 intended to indicate or should be taken by you as indicating  
12 what your verdict should be.

13 The evidence from which you will find the facts  
14 consists of testimony of the witnesses, documents, and other  
15 things received into evidence as exhibits, and any facts that  
16 the parties agree to or stipulate to or that the Court may  
17 instruct you to find.

18 Certain things are not evidence and must not be  
19 considered -- and you must not consider them, and I will list  
20 them for you now.

21 First, the indictment is not evidence.

22 Second, statements, arguments, and questions by the  
23 lawyers are not evidence.

24 Three, objections to questions are not evidence.  
25 Lawyers have an obligation to their clients to make objections

1 when they believe evidence being offered is improper under the  
2 Rules of Evidence. You should not be influenced by the  
3 objection nor by the Court's ruling on the objection. If the  
4 objection is sustained, ignore the question. If it is  
5 overruled, treat the answer like any other.

6 If you're instructed that some piece of evidence is  
7 received for a limited purpose, you must follow that  
8 instruction.

9 Four, testimony that the Court has excluded or told  
10 you to disregard is not evidence and must not be considered.  
11 Anything you may have seen or heard outside the courtroom is  
12 not evidence and must be disregarded. You are to decide this  
13 case solely on the evidence presented in this courtroom.

14 So I have told you now what is not evidence. There  
15 are two kinds of evidence: Direct and circumstantial.

16 Direct evidence is direct proof of a fact, such as  
17 the testimony of an eyewitness.

18 Circumstantial evidence is proof of facts from  
19 which you may infer or conclude that other facts exist.

20 I will give you further instructions on these as  
21 well as other matters at the end of the case. But keep in  
22 mind you may consider both kinds of evidence.

23 It is up to you to decide which witnesses to  
24 believe, which witnesses not to believe, and how much of any  
25 witness' testimony to accept or reject. I will give you some

1 guidelines for determining the credibility or believability of  
2 witnesses at the end of the case.

3           You as jurors must decide this case based solely on  
4 the evidence presented here within the four walls of this  
5 courtroom. This means that during the trial you must not  
6 conduct any independent research about the case, the matters  
7 in the case, and the individuals or corporations involved in  
8 the case. In other words, you should not consult dictionaries  
9 or reference materials, search the Internet, website, blogs,  
10 or use any other electronic tools to obtain information about  
11 the case or to help you to decide the case. Please do not try  
12 to find out information from any source outside the confines  
13 of this courtroom.

14           Until you retire to deliberate, you may not discuss  
15 this case with anyone, not even among your fellow jurors.  
16 After you retire to deliberate, you may begin discussing the  
17 case with your fellow jurors, but you cannot discuss the case  
18 with anyone else until you have returned a verdict and the  
19 case is at an end.

20           I hope that all of you find this case interesting  
21 and noteworthy. I know that many of you use cell phones,  
22 BlackBerrys, Internet, and other tools of technology. You  
23 also must not talk to anybody about the case, as I mentioned,  
24 or use these tools to communicate electronically to anyone  
25 about the case. This includes your friends and your family.

1           You may not communicate with anyone about the case  
2 on your cell phone, through email, BlackBerry, iPhone, text  
3 messaging, or through any blog or website, through any  
4 Internet chat room, or by way of any social networking sites,  
5 including Facebook, MySpace, Twitter, LinkedIn, or YouTube.

6           You may not receive any information about the case  
7 from any source other than what's presented in this courtroom  
8 concerning the case. This means do not Google any party or  
9 attorney or court personnel in the case. Do not conduct any  
10 research on the Internet about the case or the parties or the  
11 facts involved in the case. You may not blog about the case  
12 or to events surrounding the case or your jury service. You  
13 may not tweet about anything to do with the parties, events,  
14 or facts of the case or your jury service in the case.

15           Do not send any emails to anyone conveying your  
16 jury experience or information about the case.

17           In the jury room do not use your cell phone at  
18 recess or lunch to call anyone to ask questions about the  
19 issues in the case or to report any facts about the case.

20           You may not use Facebook, YouTube, or any other  
21 social network on the Internet to discuss your jury service or  
22 the issues in this case or the people involved, including the  
23 attorneys.

24           Do not attempt to re-create by experiment at home  
25 any evidence you may hear as testimony in the courtroom.

1 Failure to abide by these instructions could result  
2 in your being found in contempt of court or causing the trial  
3 to end.

4 During the course of the trial you will hear from  
5 expert witnesses. An expert witness is someone who may have  
6 knowledge in some technical, scientific, or other specialized  
7 area. When such knowledge or experience may be of assistance  
8 to you in understanding some of the evidence or in determining  
9 a fact, an expert witness is permitted to state an opinion as  
10 to the matter in which he or she claims to be an expert.

11 Merely because such a witness has expressed an  
12 opinion, however, does not mean that you have to accept that  
13 opinion. The same as with any other witness testimony, it is  
14 up to you to decide whether to rely on it and how much weight  
15 to give it.

16 The Defendant has pled not guilty to the offenses  
17 charged. Defendant is presumed to be innocent. He starts the  
18 trial with a clean slate, with no evidence against him. The  
19 presumption of innocence stays with him unless and until the  
20 Government presents evidence that overcomes that presumption  
21 by convincing you that Earl D. Warner is guilty of the  
22 offenses charged beyond a reasonable doubt.

23 The presumption of innocence requires that you find  
24 Earl D. Warner not guilty unless you are satisfied that the  
25 Government has proved guilt beyond a reasonable doubt. The

1 presumption of innocence means the Defendant has no burden or  
2 obligations to present any evidence at all or to prove that he  
3 is not guilty.

4           The burden or obligation of proof is on the  
5 Government to prove that Earl D. Warner is guilty, and that  
6 burden stays with the Government throughout the trial.

7           In order for you to find the Defendant guilty of  
8 the offenses charged, the Court -- the Government must  
9 convince you that the Defendant is guilty beyond a reasonable  
10 doubt. That means the Government must prove each and every  
11 element of each offense charged beyond a reasonable doubt.

12           The Defendant may not be convicted based upon  
13 suspicion or conjecture, but only on evidence proving guilt  
14 beyond a reasonable doubt.

15           Proof beyond a reasonable doubt does not mean proof  
16 beyond all possible doubt or to a mathematical certainty.  
17 Possible doubts or doubts based on conjecture or speculation  
18 are not reasonable doubts. A reasonable doubt is a fair doubt  
19 based on reason, logic, common sense, or experience. A  
20 reasonable doubt means a doubt that would cause an ordinary  
21 reasonable person to hesitate in acting in matters of  
22 importance in his or her own life. It may arise from the  
23 evidence or from the lack of evidence or from the nature of  
24 the evidence.

25           If after hearing all the evidence you are convinced

1 that the Government has proved Earl D. Warner guilty beyond a  
2 reasonable doubt, you should return a verdict of guilty as to  
3 the Defendant. However, if you have a reasonable doubt as to  
4 an element of an offense, then you must return a verdict of  
5 not guilty as to the Defendant for that offense.

6 I want to speak about your conduct as jurors.  
7 First, as I have instructed you before, during the trial you  
8 are not to discuss the case with anyone or permit anyone to  
9 discuss it with you. Until you retire to the jury room at the  
10 end of the case to deliberate your verdict you simply are not  
11 to talk about the case, even among yourselves.

12 Second, do not read or listen to anything touching  
13 on the case in any way. If anyone should try to talk to you  
14 about it, bring it to the Court's attention promptly.

15 Third, do not try to do any Internet or other  
16 research or make any other investigation about the case on  
17 your own.

18 Finally, do not form any opinion until all the  
19 evidence is in. Keep an open mind until you start your  
20 deliberations at the end of the case.

21 If you wish, you may take notes on the paper  
22 provided in your binders. If you decide to take notes, be  
23 careful not to get so involved in note taking that you become  
24 distracted from the ongoing proceedings.

25 Additionally, there may be a tendency to attach



1 undue importance to matters that one has written down.

2 However, some testimony that is considered unimportant at the  
3 time presented and, thus, not written down may take on a  
4 greater importance later in the trial in light of all the  
5 evidence presented.

6 Therefore, you are instructed that your notes are  
7 only a tool to aid your own individual memory and you should  
8 not compare your notes with other jurors in determining the  
9 content of any testimony or in evaluating the importance of  
10 any evidence.

11 Your notes are not evidence and are by no means a  
12 complete outline of the proceedings or a list of the  
13 highlights of the trial. Above all, your memory should be  
14 your greatest asset when it comes time to deliberate and  
15 rendering a decision in this case.

16 You may take -- you may not take your notes outside  
17 the courtroom. Before you leave the courtroom for any reason,  
18 your notes must be left in the jury room. When you leave for  
19 the night, your notes will be secured and not read by anyone.  
20 At the end of the trial your notes will be collected and  
21 destroyed. No one -- not the attorneys, my staff, newspaper  
22 reporters, or me -- will read your notes.

23 Additionally, you will not be permitted to ask  
24 questions of the witnesses or the attorneys during the trial.  
25 Therefore, please do not interrupt the lawyers during their

1 examination of a witness or otherwise.

2 If, however, you are unable to hear a witness or a  
3 lawyer, please raise your hand and the Court will see that the  
4 situation is corrected.

5 I am going to speak about the course of the trial.  
6 The trial will now begin. The prosecutor will make an opening  
7 statement, which is simply an outline to help you understand  
8 the evidence as it comes in. Next the defense attorney may,  
9 but does not have to, make an opening statement. Remember,  
10 opening statements are not evidence.

11 The Government will then present its witnesses.  
12 Counsel for the Defendant may cross-examine the witnesses.

13 Following the Government's case the Defendant may,  
14 if he wishes, present witnesses which the Government -- which  
15 the prosecution may cross-examine.

16 After all the evidence is in the attorneys will  
17 present their closing arguments to summarize and interpret the  
18 evidence for you, and the Court will instruct you on the law.

19 After that, you will retire to deliberate on your  
20 verdict, and you will have available all the exhibits that  
21 were admitted into trial. However, a transcript of the trial  
22 testimony will not be available to you. Therefore, please pay  
23 close attention to the testimony that is admitted during the  
24 trial. Your deliberation and verdict must be based on your  
25 collective recollection of that testimony during trial,

1 without the aid of a written transcript.

2 We have an additional oath for you now to take.

3 THE DEPUTY CLERK: Please stand and raise your  
4 right hand. Do each of you solemnly swear or affirm that you  
5 will follow the Court's instructions, which are that until the  
6 case is over you will not access in any way the news about  
7 this case, either by Internet, by print media, by radio or by  
8 television, and that you will not communicate with any others  
9 about this case, including not talking about it in person or  
10 by phone, not writing, blogging, or tweeting about it, and not  
11 using any social networking site -- examples of which are  
12 Facebook, MySpace, LinkedIn, and Twitter -- to discuss any  
13 aspects of this case or your work as a juror. If you agree,  
14 please say I do.

15 THE JURY: I do.

16 THE DEPUTY CLERK: Thank you. You may be seated.

17 THE COURT: Are you ready for your opening  
18 statement?

19 MS. BLOCH: I want to apologize up front, the woman  
20 that's going to cue up the computer, you had indicated we  
21 would start at approximately 3:30, and I asked her to be here  
22 at 3, but Agent Carter has already left. I believe she will  
23 be here momentarily.

24 THE COURT: Okay. Ladies and gentlemen, while we  
25 are waiting, I think what we are going to do today is we are

1 going to have the opening statements, then we are going to  
2 break for the day so everyone can get home before the traffic  
3 builds up and the weather.

4 We will start tomorrow at 9:30. There are  
5 logistical reasons for that. I am here at 7, the cafeteria  
6 opens at 7, so if you want to see what the cafeteria looks  
7 like, you can come as you wish. But we start at 9:30 because  
8 of logistical reasons, not because we are not here early.

9 We will break tomorrow at lunch from 12:30 until  
10 1:30 because I have a Board of Judges meeting at that time,  
11 and we will figure out what time we are going to close  
12 tomorrow. If there is any particular travel concerns you have  
13 or daycare issues or something like that, be sure to mention  
14 it to my deputy clerk and we will try to work with you in that  
15 regard.

16 MR. CHONTOS: Judge, can we approach for a second?  
17 (On record at sidebar as follows.)

18 MR. CHONTOS: Judge, we might have talked about  
19 this, but Carolyn plans on, in her opening, showing the video  
20 clip with audio and there is another video clip. Is that  
21 going to be broadcast to the people in the audience? That's  
22 my issue.

23 MS. BLOCH: It will. It will only be to the extent  
24 that they can see it on these screens.

25 THE COURT: Are we talking about the video being

1 broadcast?

2 MR. CHONTOS: Right.

3 THE COURT: Well, do you have any thought? Is  
4 there anybody in the audience that needs to watch this?

5 MS. BLOCH: I mean, I believe that most of the  
6 people in the courtroom are the Defendant's family members.  
7 Certainly they have the -- including his daughter. She  
8 certainly doesn't need to be in here, but I have no control  
9 over that.

10 THE COURT: My question is different. My question  
11 is --

12 MS. BLOCH: Is there anyone who needs to see it?

13 THE COURT: Right. Because we can turn all the  
14 screens around. Can we shut off the attorney's screens?

15 MS. BLOCH: Well, the way we fashioned it is, as  
16 Lisa indicated the other day, last Friday --

17 THE COURT: Lisa is the law clerk for the record.

18 MS. BLOCH: Correct, I am sorry.

19 If we turn the one that the attorney posing the  
20 questions, or in this case opening, so that it's not -- so  
21 that I can see it, but no one in the courtroom can, obviously  
22 Mr. Chontos has a screen, as does Government counsel and the  
23 paralegal who's assisting and bringing up the images. So to  
24 the extent that the members -- the guests can see what's on  
25 those screens, yes, they will.

1 THE COURT: Why can't we -- why can't these two  
2 monitors on defense counsel table be turned away from the  
3 audience?

4 MS. BLOCH: They certainly can if Mr. Chontos  
5 doesn't object to that.

6 MR. CHONTOS: Judge, I have no problem.

7 THE COURT: Then why can't we turn the two on the  
8 Government's side, why can't we turn those toward the Court.

9 MS. BLOCH: Well, we probably can at this point,  
10 but you realize as trial proceeds there's going to be  
11 images --

12 THE COURT: That wasn't --

13 MS. BLOCH: For today's purposes, certainly we can  
14 turn them.

15 THE COURT: Why don't we do that and see what that  
16 looks like. Okay?

17 MR. CHONTOS: Yes.

18 THE COURT: But the audio will obviously be heard  
19 by everybody.

20 MS. BLOCH: For whatever it's worth, this is just a  
21 short piece of it.

22 MR. CHONTOS: So it is not the 4:14.

23 THE COURT: Does that solve your problem or not?

24 MR. CHONTOS: Yes.

25 THE COURT: So do you want the --

1           MR. CHONTOS: We are going to turn them around,  
2 even though it is a shorter version, it's not the 4 minutes 14  
3 seconds.

4           THE COURT: I need to know when, in light of us  
5 doing this, I think the law requires me to give a cautionary  
6 instruction prior to the viewing of the evidence one time and  
7 following the evidence one time. I understand defense counsel  
8 does not want me to continually do the cautionary instructions  
9 every time the evidence is shown. Correct?

10           MR. CHONTOS: Right, I do want that, but it seems  
11 as though the Court's inclination is to, even before opening,  
12 to give that instruction. Or are you jumping ahead?

13           THE COURT: No, I want to know your collective  
14 wisdom as to when is the one time I read the cautionary  
15 instruction relating to prior to viewing child pornography,  
16 which seems like I either do it now or I do it the first time  
17 we get an extensive showing. So what's your collective  
18 wisdom?

19           MR. CHONTOS: Judge, it should not be done now. It  
20 should not be done when we have that first extensive showing  
21 of that. I think that to do that calls unnecessary level of  
22 attention to this piece of evidence and we don't want that.

23           THE COURT: Okay. When are you suggesting that I  
24 read it?

25           MR. CHONTOS: Not at all. Never.

1 THE COURT: What's your view?

2 MS. BLOCH: Well, as I indicated in my written  
3 notice to the Court following our status conference, I looked  
4 back into both the Cunningham case as well as into Finley. It  
5 does appear that an appellate court when looking upon the  
6 trial proceedings looks highly upon some form of cautionary  
7 instruction being provided to the jury when they're viewing  
8 images of this type.

9 I don't believe those necessarily -- and your law  
10 clerk is probably more versed in this than even I -- it  
11 necessarily requires specific instructions both before and  
12 after. It was obviously our recommendation that the Court do  
13 that. I don't know that there is case law that would require  
14 that of the Court.

15 I do think, however, that for purposes of being  
16 abundantly cautious on the part of the Court, I recognize the  
17 Defendant is objecting to it, but I -- it is somewhat -- I  
18 mean, I think it cuts -- you know, I hate to say it's  
19 disingenuous, but he doesn't want to cause alarm, yet the  
20 trial record will seem deficient if there isn't some sort of  
21 cautionary instruction provided.

22 MR. CHONTOS: Judge, I see that instruction as no  
23 different than at the end of the case when you instruct the  
24 jury, if Mr. Warner doesn't testify, about the adverse  
25 inference. I could waive that.



1 THE COURT: The problem is --

2 MR. CHONTOS: It's just the same.

3 THE COURT: Okay. The problem is those two cases  
4 certainly seemed to imply that instructions need to be given.  
5 Obviously it is another question as to whether that can be  
6 waived.

7 So what I would ask is whenever you are going to  
8 first show a lengthy portion of the child pornography evidence  
9 that you tell me and then I will decide whether to give the  
10 instruction or not. We will look further into whether the  
11 Defendant can waive the right to have this cautionary  
12 instruction. It is my understanding you have had sufficient  
13 discussions with the Defendant and he knowingly, willingly --  
14 is willing to waive the cautionary instruction.

15 MR. CHONTOS: Yes.

16 THE COURT: Thank you.

17 (Back on record in open court.)

18 THE COURT: Lisa, would you check the laptop,  
19 please.

20 MS. BLOCH: She is actually the person who's  
21 pulling it up.

22 THE COURT: I understand that. So then I would  
23 like to have her slide over a little bit catercorner, please.  
24 And then everyone on my left, I want you to move over, please.

25 My understanding is the two back monitors are off,

1 correct?

2 MS. BLOCH: That's correct, Your Honor.

3 THE COURT: Okay. Are you ready to begin, ma'am?

4 MS. BLOCH: I am, Your Honor, thank you.

5 THE COURT: Thank you.

6 MS. BLOCH: This case is about a 53-year-old man  
7 who sexually abused and exploited young, vulnerable children  
8 40 years his youth. These were young girls living in and  
9 around his neighborhood and who he then produced images, still  
10 images and videos, depicting their sexual exploitation for his  
11 sexual pleasure.

12 Sitting as jurors in this case will certainly be  
13 difficult and disturbing at times as you view the images and  
14 listen to the testimony that's offered through this trial. It  
15 is those images, however, which are the core of the present  
16 charges and the core of this case.

17 My name, again, is Carolyn Bloch and I am an  
18 Assistant United States Attorney. I am the Assistant  
19 US Attorney assigned to this case. And seated beside me is  
20 Special Agent Thomas Carter of the FBI who has served as the  
21 lead investigator on this particular case. Behind us is a  
22 paralegal from my office, Diane Wikert, who will assist me  
23 today and throughout the trial in presenting some of the  
24 evidence that the Government intends to offer.

25 The evidence to be presented over the course of the

1 next couple of days will reveal to you that during the summer  
2 of 2011, behind the walls of this two-story apartment on  
3 Brandy Springs in Mercer, Pennsylvania, where Mr. Warner lived  
4 with his 11-year-old daughter alone, he used a Canon digital  
5 camera to photograph and videotape his daughter's friends,  
6 three children, one named Margie, one named Faith, and one  
7 named Harley, each of whom was 11 or 12 years old at the time  
8 of the pending charges.

9           The photos and videos that he produced included  
10 images that depict their naked genitalia, sometimes in a  
11 particularly graphic way. Some photographs and videos also  
12 include the depiction of his hand touching Faith and sometimes  
13 depict his voice directing her.

14           This case started for law enforcement when Agent  
15 Carter received information in December, 2012, from the  
16 San Diego FBI office that in the course of an ongoing  
17 investigation out there they discovered photographs of young  
18 naked girls that they believed to be living in the Mercer,  
19 Pennsylvania, area; and that they believed as well that the  
20 photographs were taken by a man they identified as Armando  
21 Cruz, also of Mercer, Pennsylvania.

22           With the assistance of the Pennsylvania State  
23 Police and school personnel, Agent Carter will tell you that  
24 he quickly identified the girls depicted in the photographs as  
25 Margie, Faith, and Harley, as well as Earl Warner's daughter.

1           Agent Carter met with each of the victims and when  
2 he had enough evidence obtained, he put together a search  
3 warrant which was issued by the Court and he executed that  
4 warrant on Cruz's residence with other agents from the FBI and  
5 troopers from the Pennsylvania State Police on February 15<sup>th</sup>  
6 of 2012.

7           Cruz returned home that day right about the time  
8 the search was wrapping up, and at that time was arrested on  
9 charges brought by the Mercer County District Attorney's  
10 office.

11           While the search was underway, Agent Carter headed  
12 to Warner's house. He had just enough information at that  
13 point to look for Mr. Cruz there. He met with Earl Warner  
14 briefly. Agent Carter will testify about the discussion they  
15 had and he will tell you that Earl Warner explained that Cruz  
16 was a good friend and that they had played computer games at  
17 each other's homes on a fairly regular basis. Agent Carter  
18 will relate that Mr. Warner in fact told him that Cruz had  
19 been to his home twice the evening before the search and this  
20 arrest.

21           In fairly short order after federal criminal  
22 charges were brought charging Mr. Cruz with production of  
23 child pornography, and then later in March that investigation  
24 of Mr. Cruz further expanded to include Earl Warner. That  
25 expansion occurred when Mr. Cruz agreed to be interviewed by

1 the FBI.

2           You will hear testimony that Cruz explained that he  
3 and Mr. Warner were friends and that he knew that Warner, like  
4 he, was taking sexually exploitive photographs and videos of  
5 Margie, Faith, and Harley, and that he had in fact seen some  
6 of these images and videos on Mr. Warner's laptop computer.

7           He will further tell you that approximately a week  
8 before he was arrested, without Warner knowing, Cruz  
9 downloaded images and videos he could quickly find on  
10 Mr. Warner's computer to a thumb drive that he had inserted,  
11 and then later at his own home took all of the images that he  
12 had downloaded off of Mr. Warner's computer and transferred  
13 them to two disks. And then he took these two disks and he  
14 hid them in a secret spot in a building at the job where he  
15 worked.

16           The Government's evidence will establish that Agent  
17 Carter then retrieved these two disks from the spot that Cruz  
18 had hidden them and then -- and the contents were then  
19 reviewed by him as well as other agents and law enforcement  
20 officers.

21           Mr. Cruz, having -- rather, Agent Carter having  
22 reviewed the images relevant to the Cruz investigation  
23 immediately recognized Margie, Faith, and Harley in these two  
24 images of child pornography. But what he also will testify  
25 to, what was different about them was he could also recognize

1 that the backdrop to all of these images and videos were in  
2 fact the inside of Defendant Warner's home and not Mr. Cruz's.

3           The Government will present this and other evidence  
4 to prove the seven offenses charged in the superseding  
5 indictment. Six of those charges relate to -- rather, six of  
6 the counts, the first six counts charged that Mr. Warner  
7 unlawfully used, persuaded, induced, enticed, or coerced a  
8 minor, that is a child under the age of 18 years, to engage in  
9 sexually explicit conduct for the purpose of producing a  
10 visual depiction of the conduct, and that he did so using  
11 materials that had been mailed or shipped or transported in or  
12 affecting interstate or foreign commerce.

13           The seventh charge -- rather, Count 7 of the  
14 indictment charges Earl Warner with unlawful possession of  
15 visual depictions, the production of which involved the use of  
16 minors engaging in sexually explicit conduct and, again, which  
17 were produced with materials which had been transported in  
18 interstate or foreign commerce.

19           As Agent Carter's investigation continued to  
20 develop, he obtained a search warrant for Warner's residence,  
21 which was then later executed on April 9<sup>th</sup> of 2012, not too  
22 long after the recovery of the particular disks.

23           The Government will present evidence seized during  
24 that search that establishes that Earl Warner is the person  
25 who produced the images and videos that are charged or

1 referenced in this particular superseding indictment.

2           That evidence includes the Canon PowerShot SX120 IS  
3 digital camera that was used to take the pictures and videos,  
4 and two SanDisk memory cards used to store the image and  
5 videos that fit into that Canon camera. All of which, that is  
6 the camera and the two memory cards, having been found in  
7 Mr. Warner's living room during the execution of the search  
8 warrant.

9           The evidence will also include photographs that  
10 Agent Carter and his fellow agents took of the search site  
11 showing that the child pornography in question was in fact  
12 produced inside the various rooms of Earl Warner's home -- his  
13 living room, his dining room, his bathroom, his master  
14 bedroom.

15           In order to prove the interstate or foreign  
16 commerce nexus that the Government must establish, the  
17 Government will present evidence that the Canon camera, the  
18 two SanDisk memory cards, and an Acer computer, laptop  
19 computer, on which the Defendant stored some of these videos  
20 and images, all were manufactured in China or originated in  
21 China. As such, the equipment that he was using -- the  
22 camera, the memory cards, the computer -- to produce, store,  
23 and retain these images were all shipped and/or transported in  
24 both foreign and interstate nexus to get from China to Mercer,  
25 Pennsylvania, and Earl Warner's home.

1           Some of the evidence in reference to that  
2 interstate nexus will come in a slightly different form, and  
3 it will be presented in the form of certificates of  
4 authenticity from the various companies that manufactured the  
5 equipment I am speaking about, along with the business record,  
6 in fact, establishing that the particular item was originated  
7 or manufactured in the country of China.

8           Just prior to the execution of the search warrant  
9 on April 3<sup>rd</sup>, 2012, approximately six days prior to the  
10 search, Earl Warner agreed to be interviewed by Agent Carter  
11 and a member of the Pennsylvania State Police at the  
12 Pennsylvania State Police barracks in Mercer, Pennsylvania.  
13 Agent Carter's testimony will include the statements and  
14 admissions that Earl Warner made during the interview.

15           Agent Carter will tell you that Earl Warner  
16 admitted that it was his hand in fact touching Faith's  
17 genitalia in what I will reference as Government's  
18 Exhibit 2.15. Exhibit 2.15 is just one of the photographs  
19 which in fact is referenced in Count 2 of the indictment. I  
20 am going to show you that photograph as part of my opening  
21 statement.

22           Please understand that this particular image you  
23 are about to see that Mr. Warner indicated he -- it is his  
24 hand in this visual is very graphic. But it is reflective of  
25 the remainder of the Government's evidence that will be



1 presented to you through the course of the trial and the  
2 witnesses.

3 So I am going to ask Ms. Wikert if she could please  
4 pull up Exhibit No. 2.15. I can't tell if it's up.

5 THE DEPUTY CLERK: It is not up yet.

6 Okay.

7 MS. BLOCH: Agent Carter will also testify that  
8 Earl Warner admitted that it was his distinctive voice that is  
9 heard directing Faith in the video that's charged at Count 6.  
10 So for purposes of my opening today, I have asked Ms. Wikert  
11 if she would play a small piece of that video, Government's  
12 Exhibit 6.1, that Mr. Warner identified his voice in.

13 (Video played, but not recorded stenographically.)

14 MS. BLOCH: At the end of the trial the Judge will  
15 instruct you on the applicable law that is the law that  
16 applies to this case. But as the Judge has already mentioned,  
17 the facts of this case are for you, the jurors, to decide.  
18 The Government asks that you do so obviously using your  
19 fairness, your sense of reasonableness, and most importantly  
20 your common sense.

21 The Government asks that you listen closely to the  
22 testimony that will be presented over the course of the next  
23 couple of days and carefully observe the evidence that's  
24 admitted. After all of the evidence is presented, both myself  
25 and Mr. Chontos will have another opportunity to speak to you.

1 I will go through some of that evidence with you again and I  
2 will ask you at that point to return a verdict of guilty on  
3 all seven charges.

4 Thank you very much.

5 THE COURT: Would you like to open now or wait?

6 MR. CHONTOS: I will open now, Judge, thank you.

7 THE COURT: You may do so.

8 MR. CHONTOS: Ms. Bloch. Ladies and gentlemen of  
9 the jury, my name is David Chontos, I represent Earl Warner.  
10 I happen to be blessed with two kids, a 12- and a 14-year-old.  
11 This summer I would come home, a group of neighborhood boys  
12 down the street and my two kids are playing with those four  
13 and they are having a little baseball game, three-on-three,  
14 using the driveway and the street as part of the ball field.  
15 I come home a little after five, stop, wind the window down.  
16 My son happened to be playing that outfield position. I said,  
17 Benjamin, what's up? He says, oh, Dad, we're just playing a  
18 little game. I said, yeah, I can see that. What's the score?  
19 He said, 8-0. I said, wow. Oh, Dad, we're only in the second  
20 inning. I said, okay.

21 That little baseball analogy is quite appropriate  
22 here. Because the Government presents their evidence first.  
23 It's going to mount and it's going to mount and it's going to  
24 mount, to use that baseball analogy, by the third inning they  
25 will probably hit a couple grand slams, get into the seventh

1 or eighth inning, some more grand slams. But we all know  
2 baseball to be 27 outs, nine innings, three outs per inning.  
3 The home team doesn't lose until that last out in the bottom  
4 of the ninth.

5 That's what I am asking you to do. Pay attention,  
6 keep an open mind, and wait until the game -- wait until this  
7 trial is over before you determine Mr. Warner's guilt or  
8 innocence. Thank you very much.

9 THE COURT: Counsel, anything else you want to talk  
10 about before I release the jury for the evening?

11 MS. BLOCH: No, Your Honor, thank you.

12 MR. CHONTOS: Nothing while they are present,  
13 Judge.

14 THE COURT: Again, I want to instruct you that you  
15 are not supposed to talk about this case with anyone. No one  
16 should be permitted to talk to you about the case. Until you  
17 retire to the jury room at the end of the case to deliberate  
18 your verdict, simply do not talk about the case.

19 Don't read about the case. It is best not to read  
20 newspapers for a couple of days.

21 Keep an open mind. Do not form an opinion. Don't  
22 do any Internet or other research on the case.

23 Please be here early. We won't start before 9:30,  
24 but you need to be here because if one person is not here for  
25 whatever reason, we all have to wait until that person comes.

1 So I just encourage you to get here early enough to make sure  
2 that you have anticipated the worst weather possible.

3 Thank you for being here.

4 (Jury exits courtroom.)

5 (In open court; jury not present.)

6 THE COURT: Anything else before we recess for the  
7 evening?

8 MR. CHONTOS: Yes, Judge. I think it helps prevent  
9 everyone, both the Court and the defense, if we can somewhat  
10 have a preview maybe like of tomorrow morning's witnesses.

11 MS. BLOCH: Mr. Chontos had asked me this  
12 yesterday, I believe, and I had indicated that I didn't really  
13 feel that, given the abundance of pretrial discovery in this  
14 case, exhibit lists, the binders and everything else, that it  
15 was fair to ask me, with having the Jencks material for a very  
16 long time, the order of my witnesses and I don't want to have  
17 to adhere to it.

18 With that said, he knows who my witnesses are, and  
19 that's where I would prefer to leave it, Your Honor.

20 MR. CHONTOS: Judge, I am well aware that things  
21 pop up in trial where you have to take witness two --

22 THE COURT: I was about ready to rule in your  
23 favor. Do you want to convince me otherwise now?

24 MR. CHONTOS: No. I am going to put the gun back  
25 in my holster and not shoot my foot.

1           THE COURT: I would appreciate it, counsel, if you  
2 just meet with defense counsel afterwards and at least tell  
3 him who tomorrow's witnesses are going to be so we can have an  
4 orderly trial, because otherwise he certainly could say he  
5 needs a break for a period of time or something like that. So  
6 I think my standing order requires disclosing by 5 o'clock one  
7 day who the witnesses are going to be the next day. So I  
8 think in fairness to the Defendant that that's a good  
9 procedure and I will so order.

10           Anything else?

11           MR. CHONTOS: Nothing, Judge, thanks.

12           MS. BLOCH: Just as a matter of attention to your  
13 request at sidebar, it is the Government's intention tomorrow  
14 to offer all of the images en masse that contain or arguably  
15 contain child pornography. That would be Exhibits 1.1 through  
16 all of Exhibits 8.

17           THE COURT: They will come in through your first  
18 witness?

19           MS. BLOCH: They will come in through my second  
20 actually I believe.

21           THE COURT: Okay. We will look into the matter.  
22 But unless something convinces me otherwise, at the start of  
23 that presentation of evidence I will give the cautionary  
24 instruction that we have discussed earlier, and following it I  
25 will give the instruction again. I think that's required and

1 could not be waived unless somebody shows me a case to the  
2 contrary in light of the two Court of Appeals decisions that  
3 sort of define where we currently are within this circuit.

4 Anything else?

5 MS. BLOCH: The only other thing, Your Honor, is  
6 just the logistics, and it may require that you think it  
7 through over the night, but just the logistics of the various  
8 video cameras that point out to counsel and to the public and  
9 how to handle that during the course of the -- do we do this?  
10 The agent in some ways has to see what is going on too.  
11 Obviously Ms. Wikert will continue to assist me --

12 THE COURT: I guess I am not totally getting it.  
13 What is wrong with the current arrangement?

14 MS. BLOCH: Well, all right. Can you see this one  
15 when you are sitting here?

16 THE COURT: He can pull it a little closer to him.

17 MS. BLOCH: All right. This one, Ms. Tumolo and I  
18 discussed it, it would probably be outside of the viewing of  
19 them. If the attorney was standing here and could see it is  
20 on, as long as that is okay with the Court.

21 THE COURT: And the screen is -- whoever is in the  
22 witness box obviously is able to see what's being shown.

23 MS. BLOCH: Yes, they will be able to see.

24 THE COURT: Anything else on behalf of the  
25 Government?

1 MS. BLOCH: That's all I have, Your Honor.

2 MR. CHONTOS: We are good to go, Judge.

3 THE COURT: Everyone should remain seated.

4 Marshals may remove the Defendant.

5 See you all tomorrow. Try to get here at 9:15 or  
6 earlier, please. Have a safe evening.

7 (Record closed.)

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11 C E R T I F I C A T E

12 I, Richard T. Ford, certify that the foregoing  
13 is a correct transcript from the record of proceedings in the  
14 above-titled matter.

15 S/Richard T. Ford \_\_\_\_\_

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